

**IN THE INCOME TAX APPELLATE TRIBUNAL  
BANGALORE BENCHES : "C", BANGALORE**

**BEFORE SHRI N.V.VASUDEVAN, VICE PRESIDENT  
AND  
SHRI B.R.BASKARAN, ACCOUNTANT MEMBER**

**ITA No.2345(Bang)/2019  
(Assessment Year : 2011-12)**

M/s Sri Lakshmi Venkateshwara Minerals,  
21<sup>st</sup> Ward, Bellary Road Circle,  
Opp: Lucky Tyres,  
Hospet-583 201  
PANNo.ABHFS8469H

Appellant

**Vs**

The Deputy Commissioner of Income tax,  
Circle-6(1)(2),  
Bangalore

Respondent

**Appellant by : Shri V. Srinivasan, Advocete  
Revenue by : Shri Pradeep Kumar, CIT**

**Date of hearing : 29-01-2020**

**Date of pronouncement : 05-02-2020**

**ORDER**

**PER SHRI N.V.VASUDEVAN, VICE PRESIDENT :**

This is an appeal by the assessee against the order dated 30-08-2019 of CIT(A)-11, Bengaluru relating to assessment year 2011-12.

2. The assessee is a partnership firm engaged in the business of trading in iron ore. For the assessment year 2011-12 an assessment u/s 143(3) r.w.s.153C of the Income Tax Act, 1961 (Act) was passed on 31-03-2013. Against the additions made in the aforesaid order of assessment the assessee preferred appeal before the CIT(A). The CIT(A) by order dated 16-12-2014 dismissed the appeal of the assessee *in limine* on the ground that as

per sec.249(4)(a) of the Act, the assessee was required to pay taxes due on the income declared by it in the return of income for the relevant assessment year and since the assessee did not pay taxes as so required, appeal to the CIT(A) was not maintainable and accordingly, the same was dismissed. The assessee preferred appeal against the aforesaid order of CIT(A) dated 16-12-2014 before the Hon'ble ITAT. The Hon'ble ITAT in ITA No.478(B)/2015 dated 24-08-2017 directed CIT(A) to verify the claim of the assessee that a sum of Rs.5.00 Crores recovered from Lakshmi Vilas Bank account belonging to M/s Bhakta Markandeshwara Minerals, a group concern of the assessee was available for adjustment against the tax due on the income declared by the assessee in its return of income.

3. In the set aside proceedings before the CIT(A), the CIT(A) called for comments from the AO regarding availability of a sum of Rs.5.00 Crores recovered from Lakshmi Vilas Bank account belonging to M/s Bhakta Markandeshwara Minerals, a group concern of the assessee was available for adjustment against the tax due on the income declared by the assessee in its return of income. The AO vide letter dated 27-03-2018 reported that no amount seized in the case of M/s Bhakta Markandeshwara Minerals, a group concern of the assessee was available for set off. Based on the above, the CIT(A) dismissed the appeal of the assessee as un-admitted as tax on the income declared in the return of income has not been paid by the assessee. Against the aforesaid order of the CIT(A) the assessee has preferred this present appeal before the Tribunal.

4. We have heard the rival submissions. The Ld.counsel for the assessee brought to our notice that tax payable on the returned income after advance tax and prepaid tax was a sum of Rs.41,45,000/-. He brought to our notice the TDS Traces filed before us, which shows the following payments by the assessee namely a sum of Rs.2,50,377/-, Rs.49,443/- and Rs.30,506/- on 16-03-2018. He also brought to our notice payments of Rs.7,24,000/-,Rs.9.00

lakhs, Rs.9.00 lakhs and Rs.1,50,000/- and another sum of Rs.1,50,000/- on 22-02-2018. According to him, the aforesaid payments which totals a sum of Rs.25,24,000/-+Rs.1,50,000+3,30,326/- and another payment of Rs.11,20,000/- on 23-03-2018 and Rs.21,000/- on 06-04-2018 would completely discharge taxes payable on the income declared in the return of income and therefore, the appeal of the assessee ought to be admitted and the CIT(A) has to be directed to heard and decide the appeal on merits treating the appeal as validly instituted. The Learned DR submitted that the claim of the Assessee requires verification.

5. We have considered the rival submissions. The position of taxes filed by the assessee as per TDS traces as follows;

Income returned	<u>Rs.3,01,29,440</u>
Tax liability on the above	Rs. 93,09,997
<b>Less:</b> Advance tax & TDS	<u>Rs. 60,86,494</u>
	Rs. 32,23,503
<b>Add:</b> Interest u/s 234A, 234B & 234C	<u>Rs. 9,21,498</u>
Self assessment payable u/s 140A	Rs. 41,45,000
<b>Less:</b> Adjusted in Lakshmi Vilas Bank belonging to Sri Ram Minerals after several requests (7,24,000 + 9,00,000 + 9,00,000) on 03-10-2017	<u>Rs. 25,24,000</u>
	Rs. 16,21,000
<b>Less :</b> Paid on 22/02/2018	<u>Rs. 1,50,000</u>
	Rs. 14,71,000
<b>Less:</b> Recovered from banks on 05/03/2018	Rs. 3,30,326
	Rs. 11,40,674
	<u>Rs. 11,20,000</u>
<b>Less:</b> Paid on 05/04/2018	Rs. 20,674
	<u>Rs. 21,000</u>
Balance payable	<u>Rs. NIL</u>

6. We are of the view that if the tax due on returned income as claimed by the assessee has been paid, then the appeal should be adjudicated on merits. We therefore, set aside the order of the CIT(A) and direct the CIT(A) to verify the claim of the assessee and if found correct direct the CIT(A) to

admit the appeal and adjudicate various grounds raised before him on merits after due opportunity to the assessee.

7. In the result, the appeal of the assessee is treated as allowed for statistical purposes

Order pronounced in the open court on 5<sup>th</sup> February, 2020.

Sd/-  
**(B.R.BASKARAN)**  
**ACCOUNTANT MEMBER**  
Dated: 05-02-2020  
**\*am**

Sd/-  
**(N.V.VASUDEVAN)**  
**VICE PRESIDENT**

Copy of the Order forwarded to:

- 1.Appellant;
- 2.Respondent;
- 3.CIT;
- 4.CIT(A);
5. DR
6. ITO (TDS)
- 7.Guard File

By Order  
Asst.Registrar